



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

FILE COPY

Date: NOV 12 2002

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(6). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

The information you submitted indicates that you are a [REDACTED] non-profit corporation incorporated on [REDACTED]. You are an outgrowth of an unincorporated special interest group that was informally formed in [REDACTED]. The unincorporated group worked together to establish technological standards and applications for wireless products and devices using [REDACTED]. You assumed the activities of the unincorporated group at the time of your incorporation.

Your Articles of Incorporation state that your specific purpose is to "promote personal connectivity solutions based on [REDACTED] by developing, administering and promoting specifications that can be widely adopted in order to enhance the demand for products that comply with such specifications." Your bylaws provide that you are organized to promote the common interests of developers and users of products using [REDACTED].

Your membership application states that you will administer and promote specifications that can be widely adopted in order to enhance the demand for products utilizing [REDACTED] that comply with the specifications. In furtherance of this purpose, you will:

- (1) develop, administer and execute a process for certification of products that comply with [REDACTED];
- (2) administer certain licenses for the use of trademarks, copyrights and other intellectual property; and

(3) promote [REDACTED]

You state that you plan to accomplish this through the following activities:

1. Universal Specification for [REDACTED] – 60% of your activities are devoted to developing specifications for the compatibility and interoperability of [REDACTED]. You will establish specifications, develop and validate test vectors to test products for compliance with such specifications and qualify independent testers and testing facilities to test products for such compliance. Products that pass these compliance tests will be certified by you as compliant. These programs will be developed and administered by you to maximize the interoperability of [REDACTED] products produced by your members.
2. General Promotion of [REDACTED] – 30% of your activity will be devoted to promoting the use of [REDACTED] and products. Promotions includes maintaining a website, newsletters, developing and promoting the specifications, testing and certification programs. You will also engage in the development and protection of trademark and qualification marks for your members' products in compliance with [REDACTED] specifications.
3. License of Intellectual Property – 5% of your activities will be devoted to licensing. Under your membership and licensing structure, products complying with the [REDACTED] specifications are automatically eligible for royalty free, nontransferable licenses of the patent rights, trademarks, copyrights and other intellectual property necessary for the production, manufacture, sale, distribution and use of the products.
4. Meetings – 5% of your activities will be related to board of director meetings and working group meetings. These meetings are designed to develop your specifications and other such issues.

In Part II, Question 7 of your application Form 1024, you state that you have three classes of membership: [REDACTED] members, [REDACTED] members, and [REDACTED] members. Members are composed of [REDACTED] companies: [REDACTED]

[REDACTED] Part II, Question 2 of Form 1024 regarding membership dues states that [REDACTED] members pay a "substantial one-time payment when [REDACTED] membership is granted." Your bylaws provide that only [REDACTED] Members can vote and elect directors and officers. Additional [REDACTED] members may be admitted only by unanimous vote of the [REDACTED] members and will be required to pay the one-time fee in an amount yet to be determined.

[REDACTED] membership is open to any firm, corporation or other legal entity with a demonstrated interest in promoting the [REDACTED] and activities of [REDACTED]. [REDACTED] members pay a membership fee of \$[REDACTED] a year, if they have over \$[REDACTED] in

annual revenue. If below \$ [REDACTED], membership is \$ [REDACTED] per year. [REDACTED] may be members of working groups and committees but are not allowed to vote on corporate matters.

[REDACTED] membership is also open to any firm, corporation or other legal entity with a demonstrated interest in promoting [REDACTED] and activities of [REDACTED]. You state that [REDACTED] membership is currently free. Organizations may sign up for membership through your website ([REDACTED]). [REDACTED] members may be permitted to participate in certain committees as determined by your Board of Directors, but do not have voting rights.

You state in Part II, Question 7 of Form 1024 that all members and only members, regardless of membership class have a right to the specifications adopted by you and to participate in your qualification and testing programs. In your letter of [REDACTED], you state that by joining [REDACTED] members are granted access to the Interoperability specifications adopted by you, licenses to utilize certain testing materials certified by you for the purpose of testing products in connection with the certification program, and use of certain [REDACTED] trademarks.

In your letter of [REDACTED], you state that the technology specifications ([REDACTED]) are publicly available and can be found on your website. The core specifications provide the fundamental specifications required for any product to support [REDACTED]. The profile specifications provide the application-specific profiles that are currently supported by you. You also state that, "membership in the [REDACTED] is not required to access the Specifications, but only [REDACTED] members may use the Specifications or the associated intellectual property in product development, production or marketing."

You state that one of your primary goals is to provide the developer, manufacturer and consumer communities with assurances that a product identified as "[REDACTED]-qualified" will be interoperable with other [REDACTED]-qualified products. In furtherance of such goal, you have implemented the testing and qualification programs through the [REDACTED] ([REDACTED]). You state that the qualification program ensures that products demonstrate compliance with the specifications by means of replicable and consistent tests before such products may be labeled, marketed or otherwise listed as [REDACTED]-qualified products.

Administrative compliance and testing is performed under the direction of a [REDACTED] ([REDACTED]). [REDACTED]s are individuals, authorized by the [REDACTED] to review all test results against the specifications and if the product meets the requirements for qualification, it is listed on your website as [REDACTED]-qualified. Each authorized [REDACTED] must pay you an annual listing fee, currently \$ [REDACTED]. A qualification fee ranging from \$ [REDACTED] for [REDACTED] members and \$ [REDACTED] for [REDACTED] and [REDACTED] members is charged per device certified as [REDACTED] compliant. You state that certain classes of products will require verification of compliance through testing by an independent testing facility known as a [REDACTED] ([REDACTED]) prior to approval by the [REDACTED] or the [REDACTED]. Authorized [REDACTED]s must pay you a listing fee of \$ [REDACTED]. Additionally, you require equipment manufacturers and end-users to pay you Test Vector Licensing fees. These fees include a \$ [REDACTED] flat fee, distribution fees of \$ [REDACTED]-\$ [REDACTED] per test vector license up to a maximum distribution fee of \$ [REDACTED] for equipment

manufacturers and a distribution fee of \$[REDACTED]-\$[REDACTED] to a maximum of \$[REDACTED] per testing device created for the end user.

You state that [REDACTED] trademark was formerly the property of [REDACTED]. In [REDACTED], [REDACTED] transferred all its rights in [REDACTED] trademark and [REDACTED] internet domain to you. The transfer included goodwill, applications, and registrations with governmental authorities and all causes of actions for infringement related to the trademark. You have adopted a comprehensive trademark strategy pursuant to which you will continue to develop and protect [REDACTED] trademark for use by all of your members.

For members who sign [REDACTED] Trademark License Agreement, you provide the [REDACTED] Brand Book." The brand book serves to provide guidance to members on the uses and applications of [REDACTED] trademark. The brand book provides the principle focus of your trademark strategy. Page [REDACTED] of the brand book states: "the purpose of this book is to support licensees in the use of the [REDACTED] trademark, and to guide all those involved in communicating the consumer benefits of [REDACTED]." Additionally, on page [REDACTED], you state that "the [REDACTED] is an open specification for [REDACTED] communications . . . the fact that this [REDACTED], in principle, is available to any relevant OEM producer . . . may lead to the conclusion that there is no need for building a strong [REDACTED] brand. On the contrary, there are substantial commercial reasons for building a strong [REDACTED] brand." Page [REDACTED] of the brand book further describes your purposes: "The aim of the [REDACTED] brand is to provide licensees with competitive advantages by communicating the consumer benefits made possible by [REDACTED] . . ."

In your letter dated [REDACTED], you state, "the specifications are meant to be generally accepted standards for developers and users of products utilizing [REDACTED] to ensure interoperability" and that you are acting as the "standard-setting body" to provide standards for the users of [REDACTED]. You state that you are an "association of developers, manufacturers and users of the Technology who work together to develop and license new intellectual property for the advancement and dispersion of the Technology and the benefit of the Members of the [REDACTED]." Additionally, you state that you will monitor unauthorized use of the [REDACTED] trademarks by non-members, and "take appropriate measures to prevent such activities."

Section 501(c)(6) of the Code provides for the exemption from Federal income tax of business leagues, chambers of commerce, real estate boards, boards of trade and professional football leagues, not organized for profit and no part of the net earnings of which inure to the benefit of private shareholders or individuals.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. The activities of such organization should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization, whose purpose is to engage in a

regular business of a kind ordinarily carried on for a profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Rev. Rul. 56-65, 1956-1 C.B. 199 holds that a local organization whose principal activity consists of furnishing particular information and specialized individual services to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses, is performing particular services for individual persons. Such organization is not entitled to exemption under section 501(c)(6) of the Code as a business league, even though it performs functions that are of benefit to the particular industry and the public generally.

Rev. Rul. 58-294, 1958-1 C.B. 244 describes an organization formed to promote the business interests of those involved in the manufacture and sale of a particular patented product. Membership in the organization is limited to those engaged in the manufacture and sale of the product. The organization owns the controlling interests in the corporation that holds the basic patents in the product. The revenue ruling holds that such organization does not qualify for exemption as a business league under section 501(c)(6) of the Code since it is engaged in furthering the business interests of the dealers of a particular product as distinguished from improving business conditions generally.

Rev. Rul. 66-338, 1966-2 C.B. 226 holds that an organization formed to promote the interest of a particular retail trade which advised its members in the operation of their individual businesses and sells supplies and equipment to them is not exempt under section 501(c)(6) of the Code. The revenue ruling states that by providing its members with an economy and convenience in the conduct in their individual businesses, the organization is performing particular services for individual persons as distinguished from activities aimed at the improvement of business conditions in their trade or business.

Rev. Rul. 67-77, 1967-1 C.B. 138 describes an organization composed of dealers in a certain make of automobile in a designated area that is organized and operated for the primary purpose of financing general advertising campaigns to promote, with funds contributed by dealer members, the sale of that make of automobile. The revenue ruling holds that the advertising is a service for its members and the organization is not entitled to exemption as a business league under section 501(c)(6) of the Code. Activities should be directed towards the improvement of business conditions of one or more lines of business as distinguished from the performance of services for individual persons.

Rev. Rul. 68-264, 1968-1 C.B. 264 defines a particular service for the purposes of section 501(c)(6) of the Code as including an activity that serves as a convenience or economy to members of the organization in the operation of their own businesses.

Rev. Rul. 73-411, 1973-2 C.B. 180 in discussing the exempt status of a shopping center merchants' association under section 501(c)(6) of the Code, describes in detail the history of section 501(c)(6) and the types of organizations described therein. In the case of a chamber of commerce or similar organization, the common business interest required by section

1.501(c)(6)-1 of the regulations is usually the general economic welfare of a community and it has been accepted that an organization seeking exemption under section 501(c)(6) as a chamber of commerce must be one whose efforts are directed at promoting the common economic interests of all of the commercial enterprises in a given trade community. Trade associations or business leagues under section 501(c)(6) are similar to chambers of commerce, except that they serve only the common business interests of the members of a single line of business or the members of closely related lines of business within a single industry. The revenue ruling also stresses that membership in section 501(c)(6) organizations is voluntary and open generally to all businesses and professional persons in the community.

Rev. Rul. 83-164, 1983-2 C.B. 95 describes an organization whose purpose is to conduct conferences for the dissemination of information concerning computers manufactured by one specific company, M. Although membership is comprised of various businesses that own, rent or lease computers made by M, membership is open to businesses that use other brands of computers. At the conferences, presentations are given primarily by representatives of M, as well as by other experts in the computer field. Problems related to members' use of M's computers are also discussed and current information concerning M's products are also provided. The revenue ruling holds that by directing its activities to businesses that use computers made by one manufacturer, the organization is improving business conditions in a segment of a line of business rather than in an industry as a whole and is not exempt under section 501(c)(6) of the Code. The revenue ruling concludes that by providing a focus on the products of one particular manufacturer, the organization is providing M with a competitive advantage at the expense of manufacturers of other computer brands.

In National Muffler Dealers Association v. U.S., 440 U.S. 472 (1979), the Supreme Court held that an organization whose membership consisted of the franchisees of one brand of muffler did not constitute a line of business within the meaning of section 501(c)(6) of the Code because a single brand represented only a segment of an industry.

In National Prime Users Group, Inc. v. U.S., 667 F. Supp. 250 (D.C. Md. 1987), the Court held that an organization which served the needs of users of a specific brand of computers promoted only a segment of a line of business and was not exempt under section 501(c)(6) of the Code.

In Guide International Corporation v. U.S., 948 F.2d 360 (7th Cir. 1991), *aff'g* No. 89-C-2345 (N.D. Ill. 1990), the Court concluded that an association of computer users did not qualify for exemption under section 501(c)(6) of the Code because it benefited essentially users of IBM equipment.

The information that you have submitted establishes that your goal is to establish and improve the position in the marketplace of a particular public standard that links wireless products providing cross-industry compatibility, [REDACTED] and to promote the adoption of [REDACTED]. However, these specifications and standards are in competition with other specifications and standards, and are most likely incompatible with them.

It does not matter that your members are in competition with each other, that your membership is open to the entire industry, or that your program is an open system. The key consideration is whether your activities give a competitive edge to your specifications and special programs as opposed to other specifications and special programs, no matter whether the membership is open or closed. Rev. Rul. 83-164, *supra*.

Is the equivalent of a brand name and is trademarked. Although you indicate that your specification is open to the public, it does not alter the fact that your benefits are basically for a particular specification. Rev. Rul. 58-294, *supra* and Rev. Rul. 67-77, *supra*. You state that only your members have the right to receive and use the specifications and associated trademarks adopted by . As discussed in National Prime Users Group, Inc. v. U.S., *supra* and Guide International Corporation v. U.S., *supra*, benefits essentially for a particular segment of an industry precludes exemption under section 501(c)(6) of the Code. You state in your brand book that one of your primary purposes is to promote brand and provide your licensees with competitive advantages over manufacturers who do not utilize specifications.

Inherent in your membership is the restriction that your members support the use of the . This means that you do not represent a line or lines of businesses, as required under section 501(c)(6) of the Code and as discussed in National Muffler Dealers Association v. U.S., *supra*. Therefore, we have concluded that you are not acting on behalf of a recognizable line of business within the scope of section 501(c)(6).

In addition, you provide administrative compliance and testing. You require the qualifying boards and testing facilities to pay you a fee and in turn, allow these bodies to certify members' products as compliant. By providing the qualification and testing program for , you are providing a particular service to your members. Rev. Rul. 58-65, *supra*. Testing and qualification programs serve as an economy or a convenience to your members, and would bar exemption under section 501(c)(6) of the Code, if it were a primary activity. Rev. Rul. 68-264, *supra* and Rev. Rul. 66-338, *supra*.

Since your activities are not directed at promoting the common economic interests of all of the commercial enterprises in a given trade community, your right to exemption under section 501(c)(6) of the Code, if any, rests on your characterization as a business league or trade association. A section 501(c)(6) organization is a membership organization characteristically supported by dues. While such an organization may receive a substantial portion or even the primary part of its income from non-member sources, membership support, both in the form of dues and involvement in the organization's activities, must be at a meaningful level. The information you have submitted indicates that your regular membership is composed of nine promoter members. These promoter members pay a one-time payment for their membership and are your only voting class. Additional members may be admitted but only upon the unanimous vote of all promoter members. While your associate and adopter membership is unlimited, they are not entitled to vote on any corporate matters. Additionally, your membership is required to support, maintain and promote the adoption of . As such, your membership appears to be open only to individuals or organization that use . Therefore, your membership is not considered open generally to all

Individuals or companies in the field of [REDACTED] or any other related line of business, and you are not considered to be a business league or trade association within the meaning of section 501(c)(6) as described in Rev. Rul. 73-411, *supra*.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(6) of the Code and you must file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
TE/GE [REDACTED]
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

151
[REDACTED]
Acting Manager
Exempt Organizations
Technical Group 2

Initiated
T:ED:PA:TL2

11/5/2002

T:ED:PA:TL2

11-12-2002